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TAN SRI DATO' PADUKA (DR) TING PEK KHIING v. CIMB BANK BHD

HIGH COURT MALAYA, KUALA LUMPUR
HASNAH MOHAMMED HASHIM J
[BANKRUPTCY NO: D8(D4)-29-3059-2005]
B 19 MAY 2015

BANKRUPTCY: *Public examination – Appearance – Appeal by bankrupt against decision of Senior Assistant Registrar for leave that persons named ordered to appear for purpose of public examination – Whether leave of court obtained prior to*
C *application – Whether there was reasonable belief that potential witnesses must be called to give information on dealings with properties of the bankrupt – Bankruptcy Act 1967, s. 31 – Bankruptcy Rules 1969, rr. 53(1) & 54*

This was an appeal by the bankrupt against the Senior Assistant Registrar's
D decision for leave that the wives of the bankrupt and all the directors of the companies be ordered to appear for the purpose of public examination. It was the bankrupt's contention that he had no knowledge of his wives' source of income and how they had acquired the shares and properties. The bankrupt argued that the application ought to be dismissed *in limine* because no prior leave of court was obtained, as required by rr. 53(1) and 54 of the Bankruptcy
E Rules 1969 ('the Rules'). It was further submitted that there must be a reasonable belief that the potential witnesses to be called must have in his/her possession any of the estate or effects belonging to the bankrupt or capable of giving information regarding the dealing of property of the bankrupt.

F **Held (dismissing appeal):**

(1) The application to call the persons named to assist in the recovery of assets of the bankrupt should be allowed. The application was properly filed by one of the creditors pursuant to s. 31 of the Bankruptcy Act
G 1967 and rr. 53 and 54 of the Rules. (paras 18 & 19)

(2) It is important that there must be a full and complete investigation into the affairs and conduct of a bankrupt. Since the bankrupt himself had stated that he had no knowledge of his wives' source of income or their involvements in his companies, it was therefore necessary to summon
H the wives as well as the other persons named to attend the public examination and for the Director General of Insolvency ('DGI') and/or the other creditors to put questions to the said persons in order to ascertain whether there are any hidden assets or transfers of properties. (para 15)

I **(3)** The DGI must investigate through the public examination the involvement of the wives in the businesses and companies. The wives should be questioned as to their source of income to purchase properties

and other assets to show proof of it and the accounts of those companies should be examined to uncover the trails of the money. Apart from the wives, the persons identified must be summoned and examined to shed light into the affairs of the bankrupt. (para 17)

Case(s) referred to:
Re Goh Wai Kah; ex p Tan Lay Lee [2006] 6 CLJ 308 HC ***(refd)***
Re Lau Kah Lay & Tang Kuong Tiew; ex p Cold Storage (Malaysia) Bhd [2001] 3 CLJ 960 HC ***(refd)***

Legislation referred to:
Bankruptcy Act 1967, ss. 17, 31
Bankruptcy Rules 1969, rr. 53(1), 54

For the judgment debtor/appellant - Shahabudin Shaik Alaudin (Rosnida Che Ibrahim with him); M/s Shahabudin & Rozima
For the judgment creditor/respondent - Anita Natalia; M/s Lim & Lim
For Director General of Insolvency - Syarifuddin Abdul Rasan (Norizan Mohammad & Ummie Kalthom with him); FCs
For Dato' Hu Chang Pee - Lim Heng Choo (mentioning on behalf of Tony Ling for Interhill Enterprise Sdn Bhd)
For Insas Credit & Leasing Sdn Bhd - Ai Ling Yeap
For Multi Purpose Sdn Bhd - Ng Chia How
For Alliance Investment - Christina Ang (mentioning on behalf of Jeremy Ho (Public Bank))

Reported by Najib Tamby

JUDGMENT

Hasnah Mohammed Hashim J:

[1] Enclosure 124 is the bankrupt's appeal against the learned Senior Assistant Registrar's (SAR) decision made on 26 March 2015 pursuant to s. 31 of the Bankruptcy Act 1967 (BA) for leave that the wives of the bankrupt, Wong Sui Chuo and Chai Yu Lan and all the directors of the companies in exh. D19 be ordered to appear for the purpose of the public examination (PE).

Cause Papers

[2] Summons-in-chambers dated 6 February 2015 with the following affidavits:

(a) affidavit in support of Datuk Hu Chang Pee affirmed on 6 February 2015;

(b) afidavit jawapan of Tan Sri Dato' Paduka (Dr) Ting Pek Khiing affirmed on 10 March 2015; and

(c) affidavit in reply of Datuk Hu Chang Pee affirmed on 18 March 2015.

A **Background**

[3] The receiving order and adjudicating order was granted on 28 October 2010. On 24 February 2011, the bankrupt filed and submitted his statement of affairs to the official assignee (OA). He informed the OA that he is acting as corporate adviser for five companies. OA imposed the condition that the
B bankrupt pays RM50,000 monthly. A PE is being conducted pursuant to s. 17 BA. At the PE the bankrupt was cross-examined on exh. D19. Exhibit D19 is the list of companies, directors and shareholders. The bankrupt affirmed under cross-examination that his two wives, Wong Sui Chuo and Chai Yu Lan are housewives with no formal incomes. He also stated in cross-
C examination that he does not know his two wives' sources of income in acquiring companies shares and landed properties. He also claimed that he does not know the source of incomes of his children.

[4] The JC intends to cross-examine the wives and children as well as the directors and shareholders of the companies as listed below to ascertain and/
D or discover any hidden assets/properties of the JD;

i. Puan Sri Datin Paduka Wong Sui Chuo (wife)

ii. Tan Sri Dato Paduka Mahkota Chai Yu Lan (wife)

iii. Yeo Phun Chew
E

iv. Bobby Ting Sie Ching

v. Ting Sie Pie

vi. Datu Dr. Yusoff bin Hanifah

F vii. Abdul Rahim bin Abdullah

viii. Masita binti Adai

ix. Mohamaed Danel @ Bujang bin Abong

x. Telly Anak Lawrence Ta-Es
G

xi. Dr. Mahadhir Alhady bin Sulaiman

xii. June Hyden Chung

xiii. Tan Sri Datuk Amar Hj Bujang bin Mohammed Bujang

H xiv. Dato Seri Haji Mohammad Ali bin Mahmud

xv. Yong Chee Kui

xvi. Yong Chee Boh

xvii. Chai Chon Mui
I

xviii. May Ting

xix. Rita Ting Lee Tai.

The Bankrupt's Arguments

[5] Learned counsel for the bankrupt argued that the application ought to be dismissed *in limine* as no prior leave of the court was obtained. He submitted that for discovery of the bankrupt's property, the procedure is dealt with in rr. 53(1) and 54 Bankruptcy Rules 1969 (BR) which provides:

> (1) A party may, with the leave of the Court, administer interrogatories to, or obtain discovery of documents from, any other party to the proceeding.
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> (2) Application for leave may be made *ex parte.*
>
> (3) The Rules of the High Court relating to discovery and inspection shall apply with such modifications as may be necessary.; and
>
> (1) An application to the Court under section 31 shall be in writing and shall state shortly the grounds upon which it is made.
>
> (2) Applications made on behalf of the Official Assignee need not be verified by affidavit.

[6] Learned counsel for the JD further submitted that the application for discovery is based on the company searches as listed in exh. D19. The applicant is unsure of the information in the possession of the persons listed. It is also submitted that only general questions were put to the bankrupt during the PE with regards to Yu Lan Plaza and the wives. The applicant is under the erroneous belief that the shares in the companies belong to the bankrupt. It is further argued by learned counsel that the applicant has not adduced any credible evidence in support of the allegations that the bankrupt has appointed nominees to hold his interest.

[7] It is the submission of learned counsel for the bankrupt that there must be a reasonable belief that the potential witnesses to be called must have in his/her possession any of the estate or effects belonging to the bankrupt or capable of giving information regarding the dealing or property of the bankrupt.

[8] Learned counsel further submitted that the court must scrutinise the application to ascertain if all the persons to give evidence during the PE could lead to the recovery of the assets to benefit the creditors. The affidavit in support has no evidence that the persons named are holding shares or properties as nominees of the bankrupt.

The Decision And Reasons

[9] The Director General of Insolvency (DGI) is empowered to carry out his duties under the BA for the purpose of securing full and complete investigations into the affairs and conduct of a bankrupt. Section 17 BA empowers the DGI to make an application to the court to hold public examination of the bankrupt to be examined as to his conduct; dealing and

property. During such examination, any creditor who has tendered a proof of debt or his representative authorised in writing may question the bankrupt concerning his affairs and conduct. The DGI shall also take part in the examination. The court may also put such questions to the bankrupt as it thinks expedient. The bankrupt shall be examined upon oath, and it shall be his duty to answer all such questions as the court puts or allow to be put to him.

[10] Section 17 BA reads as follows:

> (1) Where the court makes a receiving order, the Director General of Insolvency may make an application to hold a public sitting on a day to be appointed by the court for the examination of the debtor, and the debtor shall attend thereat, and shall be examined as to his conduct, dealing and property:
>
> Provided that when the debtor is a lunatic or suffers from any such mental or physical affliction or disability as in the opinion of the Court renders him unfit to attend his public examination the court may dispense with such examination or direct the debtor to be examined in such manner and place as the court thinks expedient.
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> (2) The examination shall be held as soon as conveniently may be after the expiration of the time for the submission of the debtor's statement of affairs and after the first meeting of creditors.
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> (3) The court may adjourn the examination from time to time.
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> (4) Any creditor who has tendered a proof, or his representative authorised in writing, may question the debtor concerning his affairs and the causes of his failure.
>
> (5) The Director General of Insolvency shall take part in the examination of the debtor, and for the purpose thereof may, if specially authorised by the Attorney General, employ an advocate and solicitor but no advocate and solicitor shall be allowed to take part in the examination on behalf of the debtor.
>
> (6) The court may put such questions to the debtor as it thinks expedient.
>
> (7) The debtor shall be examined upon oath, and it shall be his duty to answer all such questions as the court puts or allows to be put to him.
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> (8) Such notes of the examination as the court thinks proper shall be taken down in writing by the Registrar and shall be read over to and signed by the debtor, and may thereafter be used in evidence against him, and shall be open to the inspection of any creditor at all reasonable times.
>
> (9) When the court is of opinion that the affairs of the debtor have been sufficiently investigated, it shall, by order, declare that his examination is concluded, but such order shall not preclude the court from directing a further examination of the debtor as to his conduct, dealings and property whenever it sees fit to do so.

[11] Justice Ramly Ali J (as he then was) in *Re: Goh Wai Kah; ex p Tan Lay Lee* [2006] 6 CLJ 308 explained the importance of public examination under s. 17 of the said Act:

> The object of the public examination under both sections 17 of the Bankruptcy Act 1967 is not merely for the purpose of collecting the debts on behalf of the Creditors or of ascertaining simply what sum can be made available for the Creditors who are entitled to it, but also for the purpose of the protection of the public in the cases in which the bankruptcy proceedings apply, and that there shall be a full and searching examination as to what has been the conduct of the debtor in order that a full report may be made to the Court by those who are charged to carry out the examination of the debtor, (see: *In re Paget* [1927] 2 Ch. 85).
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> All the relevant parties ie, the DGI who makes application for the public examination, the Creditors who take part in the public examination and the Deputy Registrar of the High Court who considers and allows the application for the public examination must in the first place appreciate these purposes of the public examination before the proceedings start. To borrow the words of Lord Hanworth M. R. in *In re Paget*, "to concentrate attention upon that mere debt collecting and distribution of assets is to fail to appreciate one very important side of bankruptcy proceedings and law.
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> *In re Paget* is a clear authority that the public examination is partly for the protection of the public. This principle was adopted by Astbury J in *In re Jawett* [1929] 1 Ch. 108. The same principle was earlier enunciated in the case of *In re Atherton* [1912] 2 KB 251 where Phillimore J held that the purpose of the public examination as well as the Bankruptcy Act is to secure a full and complete examination and disclosure of the facts relating to the bankruptcy in the interest of the public and not merely in the interests of the Creditors.

[12] The PE of the bankrupt is important as it will ultimately ascertain the sum available for the creditors. However, if the DGI or any creditor suspects that the spouse of the bankrupt or any other person may have in his/her possession any of the assets belonging to the bankrupt, the DGI or the creditors may apply pursuant to s. 31 BA to summon the said persons to be present at the PE to provide information or produce any documents relating to the asset of the bankrupt.

[13] Section 31 BA stipulates:

> (1) The court may, on the application of the Director General of Insolvency or of any creditor who has proved his debt at any time after a receiving order has been made against a debtor, summon before it the debtor, or any wife of his, or any person known or suspected to have in his possession any of the estate or effects belonging to the debtor, or supposed to be indebted to the debtor, or any person whom the court deems capable of giving information respecting the debtor, his dealings or

property, and the court may require any such person to produce any documents in his custody or power relating to the debtor, his dealings or property.

(2) If any person so summoned, after having been tendered a reasonable sum, refuses to come before the court at the time appointed, or refuses to produce any such document, having no lawful impediment made known to the court at the time of its sitting and allowed by it, the court may by warrant cause him to be apprehended and brought up for examination.

(3) The court may examine on oath, either by word of mouth or by written interrogatories, any person so brought before it concerning the debtor, his dealings or property.

(4) If on the examination of any such person it appears to the court that he is indebted to the debtor, the court may, on the application of the Director General of Insolvency, order him to pay to the Director General of Insolvency, at such time and in such manner as to the court seems expedient, the amount in which he is indebted or any part thereof, either in full discharge of the whole amount in question or not as the court thinks fit, with or without costs of the examination.

(5) If on the examination of any such person it appears to the court that he has in his possession any property belonging to the debtor the court may, on the application of the Director General of Insolvency, order him to deliver to the Director General of Insolvency such property or any part thereof at such time and in such manner and on such terms as to the court seems just.

(6) The powers given to the court under this section may in all cases be exercised by the Registrar and any order made or act done by the Registrar shall be deemed the order or act of the court.

[14] In the instant case before this court, the bankrupt during the PE had given evidence that he has no knowledge of his wives' source of income and how they had acquired the shares and properties.

[15] It is important that there must be a full and complete investigation into the affairs and conduct of a bankrupt. Since the bankrupt himself had stated that he has no knowledge of his wives' source of income or their involvements in his companies, it is therefore necessary to summon the wives as well as the other persons named in exh. D19 to attend the PE and for the DGI and/or the creditors to put questions to the said persons in order to ascertain whether there are any hidden asset or transfers of properties.

[16] In the case of *Re Lau Kah Lay & Tang Kuong Tiew; ex p Cold Storage (Malaysia) Bhd* [2001] 3 CLJ 960, HC Ian Chin J emphasised the importance to conduct a thorough investigation of the affairs of the bankrupt. In his judgment he said that the DGI carries the heavy task:

> … of ensuring that a bankrupt has no hidden assets stashed away whether in his name or in the name of his wife or children as otherwise people will be imbued with the message that money borrowed can be stashed away and need not be repaid and such horde can be enjoyed even when one is a bankrupt.

[17] Similarly in this case, the DGI must investigate through the PE the involvement of the wives in the JD's businesses and companies. The wives should be questioned as to their source of income to purchase properties and other assets, to show proof of it, and the accounts of those companies should be examined to uncover the trails of the money. Apart from the wives, the person as identified in exh. D19 must be summoned and examined to shed light into the affairs of the bankrupt.

[18] This application was properly filed by one of the creditors pursuant to s. 31 BA and in accordance to rr. 53 and 54 of the BR.

Conclusion

[19] I have considered the submissions as well as the authorities by counsel. Based on the above said reasons, I am of the considered view, the application to call the persons named in exh. D19 to assist in the recovery of assets of the bankrupt should be allowed. Accordingly, the appeal is dismissed with cost and the on-going PE must proceed with the attendance of the persons identified to give evidence/information and/or documents.